parties alone bear witness, each blaming the other. The doctrine is logical and sound in principle, and helpful and convenient in the proper administration of justice. It appeals to one's sense of justice, for it would seem but fair that after three years' probation a husband ought to be made to account for his dereliction to his disappointed and complaining spouse. The period is none too short. Whatever may have been the cause in the past for not giving expression to the rule (perhaps it was due to an early impression of the bench and bar that the Court of Chancery was without inherent jurisdiction to annul a marriage for impotency, notwithstanding the obviousness of the fraud, because its English prototype had not exercised it, a view voiced in Anonymous, 24 N. J. Eq. 19; in later cases there have been annulments for various kinds of fraud, some less serious in their consequences than impotency [Carris *v.* Carris, 24 N. J. Eq. 516; Crane *v.* Crane, 62 N. J. Eq. 21, 49 Atl. 734; Davis *v.* Davis, 90 N. J. Eq. 158, 106 Atl. 644; Bolmer *v.* Edsall, 90 N. J. Eq. 299, 106 Atl. 646; Ysern *v.* Horter, 110 Atl. 31]), there is no valid reason for not adopting it as a part of our common law, since the Legislature has added to the domestic relation jurisdiction of the Court of Chancery incurable impotency as a cause for annulment. While novel and an innovation in our practice, there is no reason why the rule should not have a place in our judicial system, there to subserve the administration of the law as it has for ages under a system which we inherited.

"The burden then being shifted to the husband to excuse or justify the plight of his wife, the question comes to one of belief in his story of forbearance for five years, under most trying circumstances, simply because sexual intercourse was painful and distressing to her I have misgivings. Such solicitude of a groom is noble, of a husband, heroic. Few have the fortitude to resist the temptations of the honeymoon. But human endurance has its limitations. When nature demands its due, youth is prodigal in the payment. Men are still cave men in the pleasures of the bed. The weaker sex may be more temperate, but none the less passionate, and heedless of the penalty. They do not shirk the initiation nor shrink from the consequences. The husband's plea does not inspire confidence. Common experience discredits it. And if, in fact, he had the physical power, and refrained from sexual intercourse during the five years he occupied the same bed with his wife, purely out of sympathy for her feelings, he deserves to be doubted for not having asserted his rights, even though she balked.

"The presumption of impotency has not been overcome, and a decree of nullity will be advised."

Privileged Communications—Disclosure by Physician of Information as to Contagious Veneral Disease.—In Simonsen *v.* Swenson, 177 N. W. 831, the Supreme Court of Nebraska held that a physician is

privileged to inform a boarding house keeper that one of the inmates is suffering with syphilis and that he cannot be held liable in damages by his patient even though he is mistaken in his diagnosis.

The court said in part: "At common law there was no privilege as to communications between physician and patient, and this rule still prevails when not changed by statute. Thrasher *v.* State, 92 Neb. 110, 138 N. W. 120, Ann. Cas. 1913E, 882; 40 Cyc. 2381.

"Section 7898, Rev. St. 1913, provides that a physician shall not be allowed to disclose, on the witness stand, any confidential communication intrusted to him in his professional capacity. The disclosure of confidences in this case was not by the defendant as a sworn witness, and this statute, therefore, obviously does not apply and has no bearing upon this case. There is a further provision of our statute, however (Sec. 2721, Rev. St. 1913), providing that no physician shall practice medicine without a license from the board of health, and that such a license may be revoked when a physician is found guilty of 'unprofessional or dishonorable conduct.' Among the acts of such misconduct, defined by the statute, is the 'betrayal of a professional secret to the detriment of a patient.' * * *

"When a physician in response to a duty imposed by statute, makes disclosure to public authorities of private confidences of his patient, to the extent only of what is necessary to a strict compliance with the statute on his part, and when his report is made in the manner prescribed by law, he of course has committed no breach of duty toward his patient, and has betrayed no confidence, and no liability could result. Can the same privilege be extended to him in any instance in the absence of an express legal enactment imposing upon him a strict duty to report? The statute making the 'betrayal of a professional secret' misconduct on the part of a physician is in derogation of the common law, and should be strictly construed. We believe the word 'betrayal' is used to signify a wrongful disclosure of a professional secret in violation of the trust imposed by the patient.

"No patient can expect that if his malady is found to be of a dangerously contagious nature he can still require it to be kept secret from those to whom, if there was no disclosure, such disease would be transmitted. The information given to a physician by his patient, though confidential, must, it seems to us, be given and received subject to the qualification that if the patient's disease is found to be of a dangerous and so highly contagious or infectious a nature that it will necessarily be transmitted to others unless the danger of contagion is disclosed to them, then the physician should, in that event, if no other means of protection is possible, be privileged to make so much of a disclosure to such persons as is necessary to prevent the spread of the disease. A disclosure in such case would, it follows, not be a betrayal of the confidence of the patient, since the patient must know,

when he imparts the information or subjects himself to the examination, that, in the exception stated, his disease may be disclosed.

"In order that such a privilege of making a disclosure be available to a physician, however, he must have had ordinary skill and learning of a physician, and must have exercised ordinary diligence and care in making his diagnosis; otherwise he could be subjected to an action for negligence in making a wrongful report. Harriott *v.* Plimton, 166 Mass. 585, 44 N. E. 992.

"In making such disclosure a physician must also be governed by the rules as to qualifiedly privileged communications in slander and libel cases. He must prove that a disclosure was necessary to prevent spread of disease, that the communications was to one who, it was reasonable to suppose, might otherwise be exposed, and that he himself acted in entire good faith, with reasonable grounds for his diagnosis and without malice.

"The plaintiff cites the case of Smith *v.* Driscoll, 94 Wash. 441, 162 Pac. 572, L. R. A. 1917C, 1128, and contends that this case holds that any disclosure by a physician of a confidential communication from his patient is actionable. That was a case to hold a physician liable for divulging professional secrets in his testimony in court, and when his statements were claimed to be not relevant nor pertinent to the issues involved in the case. The court held the petition against the physician demurrable under the law in that state, for the reason that it contained no allegations that the matter of which he testified was irrelevant and not pertinent to the issues of the case. In a dictum the court stated:

" 'Neither is it necessary to pursue at length the inquiry of whether a cause of action lies in favor of a patient against a physician for wrongfully divulging confidential communications. For the purposes of what we shall say, it will be assumed that, for so palpable a wrong, the law provides a remedy.'

"The instant case is a novel one. No cases bearing directly upon the question have been cited by counsel, and our search has been unsuccessful."